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ARIZONA CORPORATION COMMISSION

BRIAN C. McNEIL
EXECUTIVE SECRETARY

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DOCKET NOS: W-04096A-02-0233, W-01936A-02-0233 and W-01936A-02-0677

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern.
The recommendation has been filed in the form of an Opinion and Order on:

POTATO PATCH OWNERS CORPORATION dba
POTATO PATCH COMMUNITY WATER UTILITY, et al.
(ADJUDICATION)

Arizona Corporation Commission

DOCKETED

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POTATO PATCH WATER SERVICE, INC.
(CC&N SALE/TRANSFER)

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Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 12, 2002

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

DECEMBER 17 AND 18, 2002

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
7 POTATO PATCH OWNERS CORPORATION,
8 DBA POTATO PATCH COMMUNITY WATER
9 UTILITY FOR AN ADJUDICATION NOT A
10 PUBLIC SERVICE CORPORATION.

DOCKET NO. W-04096A-02-0233
W-01936A-02-0233

11 IN THE MATTER OF THE APPLICATION OF
12 POTATO PATCH WATER SERVICE, INC. FOR
13 THE APPROVAL OF THE SALE OF ASSETS
14 AND TRANSFER OF ITS CC&N TO POTATO
15 PATCH OWNERS CORPORATION DBA
16 POTATO PATCH COMMUNITY WATER
17 UTILITY.

DOCKET NO. W-01936A-02-0677

DECISION NO. _____

OPINION AND ORDER

13 DATE OF HEARING: November 21, 2002

14 PLACE OF HEARING: Phoenix, Arizona

15 PRESIDING ADMINISTRATIVE
LAW JUDGE: Marc E. Stern

16 APPEARANCES: Potato Patch Owners Corporation, dba Potato Patch
17 Community Water Utility, by Darren Frame, Vice-
President; and

18 Mr. David Ronald, Staff Attorney, Legal Division, on
19 behalf of the Utilities Division of the Arizona
Corporation.

20 **BY THE COMMISSION:**

21 On March 25, 2002, Potato Patch Owners Corporation ("PPOC") dba Potato Patch
22 Community Water Utility ("PPCWU")¹ filed with the Arizona Corporation Commission
23 ("Commission") an Application for Adjudication Not a Public Service Corporation ("Adjudication
24 Application").

25 On September 9, 2002, Potato Patch Water Service, Inc. ("PPWS") filed an Application for
26 Approval for the Sale of Assets and Transfer of the Certificate of Convenience and Necessity

27 _____
28 ¹ Homeowners within the Potato Patch subdivision often refer to PPOC in the alternative as Potato Patch Owners Association.

1 ("Certificate) to PPOC ("SAT Application").

2 On October 15, 2002, the Commission's Utilities Division ("Staff") filed a Motion for
3 Consolidation stating that the issues in the above-referenced matters were related.

4 On October 16, 2002, Staff issued its Staff Report.

5 On October 21, 2002, pursuant to A.A.C. R14-3-101, the Commission issued a Procedural
6 Order consolidating the applications for purposes of hearing and scheduled a hearing on November
7 21, 2002.

8 On or about November 4, 2002, PPOC provided notice of the proceeding. In response
9 thereto, no protests were filed with the Commission.

10 On November 21, 2002, a full public hearing was held before a duly authorized
11 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. PPOC dba PPCWU
12 appeared through its vice-president who is also the chairman of PPCWU's Water Board. Staff
13 appeared with counsel. PPWS did not enter an appearance. At the conclusion of the hearing, the
14 matter was taken under advisement pending submission of a Recommended Opinion and Order to the
15 Commission.

16 * * * * *

17 Having considered the entire record herein and being fully advised in the premises, the
18 Commission finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. Pursuant to authority granted by the Commission in Decision No. 35237 (May 28,
21 1964), PPWS provides public water utility service to an area that is primarily a vacation home
22 subdivision in Yavapai County located near Lynx Lake east of Prescott, Arizona.

23 2. PPWS' service area consists of a 133 lot subdivision which has 90 lots that have had
24 residences constructed on them and receive water service. The remaining 43 lots, some of which are
25 not buildable, have not yet had homes built on them. Only three residences are occupied on a full-
26 time basis.

27 3. PPWS' water production facilities have previously been very limited in terms of water
28 production and its distribution system is old and in need of costly repairs.

4. On or about February 20, 2002, PPWS sold its water utility assets for \$105,000 to PPOC, an Arizona non-profit corporation, dba PPCWU which had been formed to purchase and operate the water utility for the benefit of the lot owners in the Potato Patch subdivision.

5. On March 25, 2002, PPOC dba PPCWU filed the Adjudication Application.

6. On September 9, 2002, PPWS filed the SAT Application requesting the Commission's authorization for the sale of its assets and transfer of its Certificate to PPOC dba PPCWU which had been operating the utility which supplies water to the Potato Patch subdivision since February.

7. On or about November 4, 2002, PPOC mailed notice of the SAT application, the Adjudication Application and the hearing thereon and in response thereto, no protests have been received by the Commission.

8. Prior to the purchase, PPOC secured the approval of 79 percent of the lot owners in the subdivision to proceed with the purchase.

9. In order to fund the purchase of PPWS' assets, PPOC collected \$1,675 from each metered lot owner or the metered lot owner signed a five-year note for the amount due. After \$112,000 had been collected, PPOC paid the agreed purchase price to PPWS. Additionally, PPOC secured from Wells Fargo Bank a \$150,000 line of credit which is to be utilized for repairs and system upgrades.

10. During the hearing, PPCWU's chairman testified that many system repairs had already been made and that two new wells had been drilled to improve water service in the future.

11. PPOC will not require lot owners in the subdivision to pay the assessment paid by the metered lot owners until they request service.

12. PPOC has retained a certificated operator that will assist in its operation.

13. Pursuant to Decision No. 58582 (April 6, 1994), PPWS was authorized a base charge of \$22.50 inclusive of 1,000 gallons with additional gallonage at \$3.00 per 1,000 gallons. However, according to the last annual report filed by PPWS, the utility experienced a \$3,000 operating loss.

14. Subsequent to acquiring the assets of PPWS, PPOC began charging a rate not authorized by the Commission to homeowners in the subdivision. As of April 18, 2002, PPOC began charging its customers a base rate of \$30 per month inclusive of 2,000 gallons with additional

1 gallonage priced at \$4.50 per 1,000 gallons. The PPOC made this increase to ensure that the water
2 utility would not operate at a loss².

3 15. PPOC has refunded all security deposits and no refunds are due for main extensions.
4 Additionally, it will also assume the obligation for refunds on meters and service lines.

5 16. According to the Staff Report, PPOC is in compliance with the water testing
6 requirements of the Arizona Department of Environmental Quality ("ADEQ") and its water meets the
7 standards of the Safe Drinking Water Act. PPOC is also current on its property taxes.

8 17. With respect to the Adjudication Application, Staff cited Commission Decision No.
9 55568 (May 7, 1987), in which the Commission issued a policy directive regarding applications for
10 adjudication not a public service corporation, and provided the following criteria for its evaluation of
11 such applications:

- 12 1. the application must be submitted by a non-profit homeowners' association;
- 13 2. the application is a bona fide request by a majority of the membership of the
14 association through a petition signed by 51 percent or more of the then-existing
15 members;
- 16 3. that all such associations making an application have complete ownership of the
17 system and the necessary assets;
- 18 4. that every customer is a member/owner with equal voting rights and that each
19 member is or will be a customer;
- 20 5. that the service area involved encompasses a fixed territory which is not within the
21 service area of a municipal utility or public service corporation, or if it is, that the
22 municipal utility or public service corporation is unable to serve;
- 23 6. that there is a prohibition against further sub-division evidenced by deed
24 restrictions, zoning, water restrictions, or other enforceable governmental
25 regulations; and
- 26 7. that the membership is restricted to a fixed number of customers, actual or

27
28 ² As a result of the increase in rates by PPOC prior to approval of the Adjudication Application herein, at least \$5,400 has
been over collected by PPOC from its owners/customers.

1 potential.

2 18. PPOC is a nonprofit corporation formed as a homeowners' association to manage and
3 maintain common areas of the subdivision and to act in unison to promote the common interests of
4 the lot owners in the requested adjudication area.

5 19. The Adjudication Application was based on a petition signed by a majority of the lot
6 owners in the subdivision.

7 20. PPOC will have complete ownership of the well and water utility facilities that will
8 provide water service to its members.

9 21. According to the Adjudication Application, every member of PPOC will have equal
10 voting rights.

11 22. PPOC's service area encompasses a fixed area that is not within the service area of a
12 municipal utility or the service area of a public service corporation.

13 23. The CC&Rs prohibit further subdivision of the lot parcels, and water service to the
14 lots in the service area of PPOC has been limited to the existing lots.

15 24. The membership in PPOC is restricted to a fixed number of actual or potential
16 customers based on the ownership of the lots in the subdivision.

17 25. Staff has recommended the following: that the SAT Application of PPWS be
18 approved; that PPOC's Adjudication Application be approved; that the Commission order PPOC to
19 notify its owners/customers of the difference in the rates and offer them a refund if requested; and
20 that the Certificate of PPWS be cancelled.

21 26. Mr. Frame stipulated that PPOC agrees with Staff's recommendations with the
22 exception of the refund requirement.

23 27. Under the circumstances herein, we concur with Staff's recommendations.

24 **CONCLUSIONS OF LAW**

25 1. PPWS is a public service corporation within the meaning of Article XV of the Arizona
26 Constitution and A.R.S. §§ 40-281, 40-282 and 40-252.

27 2. The Commission has jurisdiction over PPWS and PPOC and the subject matter of the
28 applications.

1 3. There is a continuing need for the provision of water utility service to the public in the
2 PPWS' certificated service area.

3 4. The transfer to PPOC dba PPCWU of the assets of PPWS and the cancellation of
4 PPWS' Certificate is in the public interest.

5 5. Notice of the Sale of Assets and Transfer of the Certificate of Convenience and
6 Necessity to PPOC Application and the Adjudication Application as described herein was given in
7 the manner prescribed by law.

6. Staff's recommendations, as set forth in Findings of Fact No. 25, are reasonable and should be adopted.

ORDER

11 IT IS THEREFORE ORDERED that the application of Potato Patch Water Service, Inc. for
12 approval of the sale of utility assets and transfer of its Certificate of Convenience and Necessity to
13 Potato Patch Owners Corporation, dba Potato Patch Community Water Utility is hereby, approved.

14 IT IS FURTHER ORDERED that the application of Potato Patch Owners Corporation, dba
15 Potato Patch Community Water Utility for an adjudication not a public service corporation is hereby
16 approved.

17 IT IS FURTHER ORDERED that Potato Patch Owners Corporation, dba Potato Patch
18 Community Water Utility shall notify its owners/customers of the rate differential charged since
19 April 18, 2002 and make an offer of a refund, if one is due.

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1 IT IS FURTHER ORDERED that Decision No. 35237 be, and is hereby, rescinded and the
2 Certificate of Convenience and Necessity granted therein be, and is hereby, cancelled.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
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6

7 CHAIRMAN

COMMISSIONER

COMMISSIONER

8
9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of Phoenix,
13 this ____ day of _____, 2002.

14 BRIAN C. McNEIL
EXECUTIVE SECRETARY

15 DISSENT _____

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1 SERVICE LIST FOR: POTATO PATCH OWNERS CORPORATION, et al.

2 DOCKET NO. W-04096A-02-0233, et al.

3

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